

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REBECCA T. SHUMYE,

Plaintiff,

v.

SAMUEL D. FELLEKE,

Defendant

No. C-06-3322 MMC

**ORDER RE: MAY 16, 2008 CASE
MANAGEMENT CONFERENCE**

On April 8, 2008, plaintiff filed a notice of appeal, in which she purported to appeal the Court's¹ order of April 4, 2008, by which the Court granted in part and denied in part defendant's motion for summary judgment and denied plaintiff's motion for summary judgment. Presently, a Case Management Conference is scheduled for May 16, 2008.

"Where the deficiency in a notice of appeal, by reason of untimeliness, lack of essential recitals, or reference to a non-appealable order, is clear to the district court, it may disregard the purported notice of appeal and proceed with the case, knowing that it has not been deprived of jurisdiction." Ruby v. Secretary of the United States Navy, 365 F. 2d 385, 389 (9th Cir. 1966). Here, plaintiff purports to appeal from a non-appealable order. See Simons v. United States, 497 F. 2d 1046, 1050 (9th Cir. 1974) (holding order denying motion for summary judgment is "nonappealable order"); see also LaTrieste Restaurant &

¹The matter was reassigned to the undersigned on April 7, 2008.

1 Cabaret, Inc. v. Village of Port Chester, 96 F. 3d 598, 599 (2nd Cir. 1996) (stating general
2 rule that order granting partial summary judgment is nonappealable order). Consequently,
3 it is "clear" to the Court that the notice of appeal is deficient. See Ruby, 365 F. 2d at 389.

4 Accordingly, the May 16, 2008 Case Management Conference will proceed as
5 scheduled.

6 **IT IS SO ORDERED.**

7
8 Dated: May 9, 2008


MAXINE M. CHESNEY
United States District Judge